



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 5, 1998

Ms. Lisa L. Maillet  
Assistant County and District Attorney  
Ellis County Courthouse  
Waxahachie, Texas 75165-3759

OR98-0010

Dear Ms. Maillet:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 111310.

Ellis County has received two requests for all information concerning the death of Mr. Ramiro Salgado. You state that some of the requested information will be released to the requestors. You claim, however, that the remaining information is excepted from required public disclosure by section 552.108 of the Government Code.

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten business days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See, e.g., Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

It appears that you received the first request for information at the latest on September 18, 1997. You did not seek a decision from this office until October 7, 1997. Consequently, you have not met your statutory burden. Gov't Code 552.301. The requested information is therefore presumed public.<sup>1</sup> See Gov't Code § 552.007. After examining the

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<sup>1</sup>Generally, section 552.108 does not provide a compelling demonstration to overcome the presumption of openness. Cf. Open Records Decision No. 586 (1991) (need of another governmental body to withhold information may provide compelling reason for nondisclosure).

documents, however, we find that some of the requested information is excepted from disclosure under section 552.101 because it is confidential by law. Section 552.101 provides a compelling reason to overcome the presumption of openness. Thus, we will examine which documents must be withheld.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. We first recognize that section 552.101 of the Government Code excepts from disclosure criminal history report information ("CHRI"). Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Therefore, assuming that you have CHRI in your possession and it falls within the ambit of these state and federal regulations, you must withhold any CHRI from the requestors.

The Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes, protects from disclosure "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." V.T.C.S. art. 4495b, § 5.08(b). The documents submitted to this office include medical records access to which is governed by provisions outside the Open Records Act. Open Records Decision No. 598 (1991). The MPA provides for both confidentiality of medical records and certain statutory access requirements. *Id.* at 2. The medical records submitted to this office for review may only be released as provided by the MPA. We have marked the records which must be withheld.

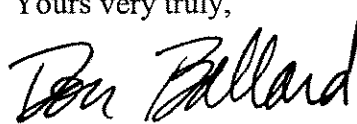
We next find that the requested documents contain forms subject to protection under section 552.101. First, one of the documents you submitted to this office for review is an Employment Eligibility Verification, Form I-9. Form I-9 is governed by title 8, section 1324a of the United States Code, which provides that the form "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. 8 U.S.C. § 1324a(b)(5); *see* 8 C.F.R. § 274a.2(b)(4). Release of this document under the Open Records Act would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we conclude that Form I-9 is confidential under section 552.101 of the Open Records Act and may only be released in compliance with the federal laws and regulations governing the employment verification system. Second, the records contain an employee W-4 form. Employee W-4 forms are excepted from disclosure by 26 U.S.C. § 6103(a). Open Records Decision No. 600 (1992). You must withhold this document.

Finally, we caution that the submitted records contain the deceased's social security number. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the records here are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure on the basis of that federal provision. We caution, however, that section 552.353 of the Open Records Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained pursuant to any provision of law, enacted on or after October 1, 1990.

In the absence of a demonstration that the remaining requested information is *confidential by law or that other compelling reasons exist as to why the information should not be made public*, you must release the information. Open Records Decision No. 195 (1978). *See also* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, flowing style.

Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/ch

Ref: ID# 111310

Enclosures: Submitted documents

cc: Mr. Dave Michaels  
Reporter, The Dallas Morning News  
Communications Center  
P.O. Box 655237  
Dallas, Texas 75265  
(w/o enclosures)

The Consul General of Mexico  
The Honorable Ramón Xilotl  
8855 N. Stemmons Freeway  
Dallas, Texas 75019  
(w/o enclosures)